IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2174 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAWAHAR SHRIDHARPRASAD AJANI

Versus

DIVISIONL CONTROLLER

Appearance:

1. Special Civil Application No. 2174 of 1988

MR KARTIK PANDYA FOR MR VIJAY H PATEL for Petitioner.

MR HARDIK C RAWAL for Respondents.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 17/08/2001

ORAL JUDGEMENT

1. The petitioner who was serving as Conductor in Bhuj Division of the respondent Corporation was dismissed on 10/2/1983. Thereafter, his Second Appeal was

partially allowed vide order dated 16/1/1984 whereby he was reinstated in service and the period between date of dismissal and reinstatement was directed to be treated as leave without pay, and further it was held that the petitioner would be entitled to the basic pay applicable to the post of Conductor instead of the salary which he was being paid on the date of dismissal. However, due to error on the part of the respondent Corporation he was paid salary at a higher rate and recovery vide order dated 25/7/1997 was ordered to be made for a sum of Rs.12,917.45. It is primarily this order which is under challenge in this petition.

2. Incidentaly, as a consequence of reinstatement he was also considered for increment in the pay along with other employees and for the purpose of computing increment instead of the basic starting pay which was to be taken into consideration the salary which was received by the petitioner on the date of dismissal was taken into consideration vide order dated 30/3/1988. This order was revised vide subsequent order dated 26/4/1988 as the Corporation realized the error in computing the quantum of increment to which the petitioner was entitled.

3. We have heard Mr.Kartik Pandya, learned Advocate for the petitioner and Mr.Hardik C.Rawal for the respondents. At the time of hearing it was submitted on behalf of the petitioner that the amount as per the order dated 25/7/1987 (Annexure "C") has already been recovered from the petitioner. It was submitted that, in so far as the order fixing the increment on 30/3/1988 should not be disturbed and the order revising the same on 26/4/1988 should be quashed. However, no such relief is prayed for and the only challenge is quashing the order at Annexure "C". In view of the fact that the recovery has already been made this petition has become infructuous and accordingly it is rejected. Rule is discharged with no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt